
Declaration of Wang Baoshu

EXHIBIT 9

Supervision and Administration of State-owned Assets of Enterprises

(Promulgated by the State Council on 27 May 2003 and effective as of date of promulgation.)

PART ONE GENERAL PROVISIONS

Article 1 These Regulations are formulated in order to establish a system for the supervision and administration of State-owned assets that is in accord with the requirements of a socialist market economy, to further improve State-owned enterprises, to promote the strategic adjustment of the distribution and structure of the State-owned economy, to develop and expand the State-owned economy, and to realize the maintenance of and increase in the value of State-owned assets.

Article 2 These Regulations shall apply to the supervision and administration of State-owned assets of State-owned enterprises, State-controlled enterprises, and enterprises in which the State has an equity participation.

These Regulations shall not apply to the supervision and administration of State-owned assets of financial institutions.

Article 3 For the purposes of these Regulations, the term "State-owned assets of enterprises" shall refer to all forms of investment by the State in enterprises, the rights and interests created by such investment, and other rights and interests that are determined as being owned by the State according to law.

Article 4 State-owned assets of enterprises are owned by the State. The State shall implement a system for administration of State-owned assets wherein the State Council and the local people's governments respectively perform the duties of investors and enjoy the rights and interests of owners on behalf of the State, wherein the rights, obligations and responsibilities are unified and the administration of assets, personnel and matters are combined.

Article 5 The State Council shall, on behalf of the State, perform the duties of investors in large State-owned or State-controlled enterprises, or in which the State has an equity participation and that are vital to the national economy or related to national security, and in enterprises that are State-owned, State-controlled or in which the State has an equity participation that are in sectors such as major infrastructure and important natural resources, etc. The enterprises in which the State Council performs the duties of investors shall be determined and announced by the State Council. (

The people's governments of provinces, autonomous regions and municipalities directly under the central government, and the people's governments at the level of

municipalities divided into districts and autonomous prefectures shall respectively perform the duties of investors on behalf of the State in State-owned enterprises, State-controlled enterprises, or enterprises in which the State has an equity participation other than those in which the State Council performs the duties of investors. The people's governments of provinces, autonomous regions and municipalities directly under the central government shall determine and announce the State-owned enterprises, State-controlled enterprises and enterprises in which the State has an equity participation in which they perform the duties of investors and shall report the same to the State-owned assets supervision and administration authority of the State Council for record filing. The people's governments at the level of municipalities divided into districts and autonomous prefectures shall determine and announce the State-owned enterprises, State-controlled enterprises and enterprises in which the State has an equity participation in which they perform the duties of investors and shall report the same to the State-owned assets supervision and administration authority of the people's governments of the provinces, autonomous regions and municipalities directly under the central government for record filing.

The enterprises in which the State Council, the people's governments of provinces, autonomous regions or municipalities directly under the central government and the people's governments at the level of municipalities divided into districts and autonomous prefectures perform the duties of investors shall hereinafter be referred to as "Funded Enterprises".

Article 6 The State Council, the people's governments of provinces, autonomous regions and municipalities directly under the central government and the people's governments at the level of municipalities divided into districts and autonomous prefectures shall respectively set up State-owned assets supervision and administration authorities. State-owned assets supervision and administration authorities shall, in accordance with their authorized powers, perform the duties of investors in accordance with the law and supervise and administer the State-owned assets of enterprises in accordance with the law.

Municipalities divided into districts and autonomous prefectures that have relatively few State-owned assets in enterprises may, subject to the approval of the people's government of the province, autonomous region or municipality directly under the central government, be exempted from the requirement of setting up an independent State-owned assets supervision and administration authority.

Article 7 All levels of people's governments shall rigorously implement the laws and regulations on the administration of State-owned assets, separate the public administration function of government from that of investors of State-owned assets, maintain the separation of government and enterprise and implement the separation of ownership and right of operation.

State-owned assets supervision and administration authorities shall not carry out the public administration function of government. Other government authorities and departments shall not perform the duties of investors of State-owned assets of enterprises.

Article 8 State-owned assets supervision and administration authorities shall establish sound systems of internal supervision in accordance with the provisions of these Regulations and other relevant laws and administrative regulations, and shall rigorously implement laws and administrative regulations.

Article 9 In the case of war, serious natural disaster or other major urgent circumstances, the State may centrally allocate or dispose of the State-owned assets of enterprises in accordance with the law.

Article 10 Funded Enterprises and enterprises invested in and established by them shall enjoy the right of autonomous operation in accordance with the relevant laws and administrative regulations.

State-owned assets supervision and administration authorities shall support autonomous operation of enterprises in accordance with the law and may not interfere in the production and operation activities of enterprises except when carrying out their duties as investor.

Article 11 Funded Enterprises shall work hard to improve their economic efficiency and shall be responsible for maintaining and increasing the value of the State-owned assets of enterprises that they operate with and administer.

Funded Enterprises shall accept supervision and administration of State-owned assets supervision and administration authorities in accordance with the law, and may not harm the lawful rights and interests of the owner of State-owned assets of enterprises or other investors.

PART TWO STATE-OWNED ASSETS SUPERVISION AND ADMINISTRATION AUTHORITIES

Article 12 The State-owned assets supervision and administration authority of the State Council is a directly subordinate authority specially established to perform the duties of investors on behalf of the State Council and is responsible for the supervision and administration of State-owned assets of enterprises.

The State-owned assets supervision and administration authorities of people's governments of provinces, autonomous regions and municipalities directly under the central government and those of people's government at the level of municipalities divided into districts and autonomous level are directly subordinate authorities specially established to perform the duties of investors on behalf of the

people's government at their level and are responsible for the supervision and administration of State-owned assets of enterprises. (

The State-owned assets supervision and administration authority of people's governments at higher levels shall guide and supervise work on supervision and administration of State-owned assets of people's governments at lower levels in accordance with the law. (

Article 13 The main duties of State-owned assets supervision and administration authorities shall be:

1. to perform the duties of investors and to safeguard owners' rights in accordance with laws and regulations such as the PRC, Company Law;

2. to guide and promote reform and reorganization of State-owned and State-controlled enterprises;

3. to appoint boards of supervisors to Funded Enterprises in accordance with regulations;

4. to appoint, dismiss and assess the responsible persons of Funded Enterprises in accordance with statutory procedures, and to reward or penalize them on the basis of the results of the assessments;

5. to supervise the maintenance of and increase in the value of State-owned assets of enterprises through such methods as statistics and audits; and

6. to perform other duties of investors and to undertake other duties delegated to them by the government at the same level.

The State-owned assets supervision and administration authority of the State Council may, in addition to the duties specified in the preceding paragraph, formulate rules and regulations and systems for the supervision and administration of the State-owned assets of enterprises.

Article 14 The main obligations of State-owned assets supervision and administration authorities shall be:

1. to promote the rational circulation and optimal distribution of State-owned assets and to promote the adjustment of the distribution and structure of the State-owned economy;

2. to maintain and improve the dominance and competitiveness of the State-owned economy in sectors vital to the national economy and related to national security, and to improve the overall quality of the State-owned economy;

3. to explore effective systems and methods of operating the State-owned assets of enterprises, to strengthen supervision and administration work of the State-owned assets of enterprises, to promote the maintenance of, and increase in, the value of the State-owned assets of enterprises, and to prevent the loss of the State-owned assets of enterprises;

4. to guide and promote the establishment of modern enterprise systems, improvement in the legal person governance structure and promotion of modernization of management in State-owned and State-controlled enterprises;

5. to respect and safeguard the right of autonomous operation of State-owned and State-controlled enterprises, to safeguard the lawful rights and interests of enterprises, to promote operation and management of enterprises in accordance with the law, and to strengthen the competitiveness of enterprises; and

6. to guide and coordinate the resolution of difficulties and problems encountered in the reform and development of State-owned and State-controlled enterprises.

Article 15 State-owned assets supervision and administration authorities shall report to the government at the same level on their work on supervision and administration of the State-owned assets of enterprises, the maintenance of and increase in the value of State-owned assets and other major matters. (

PART THREE ADMINISTRATION OF THE RESPONSIBLE PERSONS OF ENTERPRISES (

Article 16 State-owned assets supervision and administration authorities shall establish sound selection mechanisms and incentive and restraint mechanisms for responsible persons of enterprises that fulfil the requirements of modern enterprise systems.

Article 17 State-owned assets supervision and administration authorities shall appoint and dismiss or propose the appointment and dismissal of the responsible persons of enterprises in accordance with relevant regulations: (

1. appoint and dismiss the general manager, deputy general manager, chief accountant and other responsible persons of wholly State-owned enterprises;

2. appoint and dismiss the chairman of the board of directors, the vice chairman of the board of directors and the directors of wholly State-owned companies, and propose the appointment and dismissal of the general manager, deputy general manager and chief accountant, etc. of such companies;

3. nominate candidates for the positions of director and supervisor of State-controlled companies, recommend candidates for the positions of chairman of the board of directors, vice chairman of the board of directors and chairman of the board of supervisors of State-controlled companies, and propose candidates for the positions of general manager, deputy general manager and chief accountant of such companies in accordance with the articles of association of the companies; and

4. nominate candidates for the positions of directors and supervisors of companies in which the State has an equity participation in accordance with the articles of association of the companies.

Where the State Council, the people's government of provinces, autonomous regions or municipalities directly under the central government, or the people's government at the level of municipalities divided into districts or autonomous prefectures has other provisions governing the appointment and dismissal of responsible persons of Funded Enterprises, the relevant provisions shall apply.

Article 18 State-owned assets supervision and administration authorities shall establish systems for assessment of the management performance of responsible persons of enterprises, sign a performance contract with the responsible persons of enterprises that they appoint, and conduct annual and office term assessment of the responsible persons in accordance with the performance contract.

Article 19 State-owned assets supervision and administration authorities shall, in accordance with relevant regulations, determine the remuneration of the responsible persons of wholly State-owned enterprises and companies among the Funded Enterprises, and shall decide on the rewards and penalties for the responsible persons that they appointed to the Funded Enterprises based on the results of the assessments.

PART FOUR ADMINISTRATION OF MAJOR MATTERS OF ENTERPRISES

Article 20 State-owned assets supervision and administration authorities shall be responsible for guiding State-owned and State-controlled enterprises in the establishment of modern enterprise systems. They shall examine and approve plans for reorganization and reform of the share system of the wholly State-owned enterprises and companies among their Funded Enterprises and the articles of association of the wholly State-owned companies among their Funded Enterprises.

Article 21 State-owned assets supervision and administration authorities shall, in accordance with the statutory procedures, decide on major matters regarding wholly State-owned enterprises and companies among their Funded Enterprises such as division, merger, bankruptcy, dissolution, increase or decrease in capital and issue of corporate bonds. After a State-owned assets supervision and administration authority has examined and approved important division, merger,

bankruptcy or dissolution of wholly State-owned enterprises and companies, it shall report the same to the people's government at the same level for approval.

When, in accordance with the statutory procedures, State-owned assets supervision and administration authorities examine, verify and decide on major matters of wholly State-owned enterprises and companies among their Funded Enterprises in the sector of national defence science and technology industry, they shall perform in accordance with the relevant State laws and regulations.

Article 22 State-owned assets supervision and administration authorities shall, in accordance with the provisions of the Company Law, appoint shareholders' representatives and directors to attend the shareholders' meetings and board meetings of State-controlled companies and companies in which the State has an equity participation.

When the shareholders' meetings or board meetings of State-controlled companies and companies in which the State has an equity participation decide on major matters such as division, merger, bankruptcy, dissolution, increase or decrease in capital, issue of corporate bonds, appointment or dismissal of responsible persons of enterprises, etc., the shareholders' representative and director appointed by the State-owned assets supervision and administration authority shall express opinions and exercise his voting rights as directed by the State-owned assets supervision and administration authority.

Shareholders' representatives and directors appointed by State-owned assets supervision and administration authorities shall report the details of their performance of duties to the State-owned assets supervision and administration authority in a timely manner.

Article 23 State-owned assets supervision and administration authorities shall decide on the assignment of State-owned equity in their Funded Enterprises. Where the assignment of all the State-owned equity or the assignment of part of the State-owned equity would result in the State no longer having the controlling interest in the enterprise, it shall be reported to the people's government at the same level for approval.

Article 24 In respect of major matters of major subsidiaries invested in and established by Funded Enterprises that must be reported by Funded Enterprises to the State-owned assets supervision and administration authority for approval, the procedures for administration thereof shall be formulated by the State-owned assets supervision and administration authority of the State Council separately and reported to the State Council for approval.

Article 25 State-owned assets supervision and administration authorities shall organize and coordinate work in regards to merger and acquisition, and bankruptcy

of the wholly State-owned enterprises and companies among their Funded Enterprises in accordance with relevant State regulations, and shall coordinate with the relevant departments on work such as arrangements for laid-off staff and workers of the enterprises.

Article 26 State-owned assets supervision and administration authorities shall, in accordance with relevant State regulations, draw up guiding opinions on the reform of the income distribution systems of their Funded Enterprises and regulate the overall level of wage distribution in their Funded Enterprises.

Article 27 Subject to the approval of the State Council, wholly State-owned enterprises and companies among Funded Enterprises may enjoy the rights stipulated in Article 12 of the Company Law in the capacity of investment company or holding company specified by the State Council and the rights stipulated in Article 20 of the Company Law in the capacity of organizations authorized by the State to invest.

Article 28 State-owned assets supervision and administration authorities may authorize the wholly State-owned enterprises and companies among their Funded Enterprises that are qualified to operate State-owned assets.

Wholly State-owned enterprises and companies so authorized shall operate, administer and supervise, in accordance with the law, State-owned assets created by State investment in the enterprises that they wholly own, have a controlling interest, or have an equity participation.

Article 29 Authorized wholly State-owned enterprises and companies shall establish and improve standardized modern enterprise systems and shall be responsible for maintaining and increasing the value of State-owned assets of enterprises.

PART FIVE ADMINISTRATION OF STATE-OWNED ASSETS OF ENTERPRISES

Article 30 State-owned assets supervision and administration authorities shall be responsible for basic administration of State-owned assets of enterprises such as delineation and registration of property rights, regulation of asset valuation, inventorying of assets and verification of capital, compilation of statistics concerning assets, overall valuation, etc. in accordance with relevant State regulations.

State-owned assets supervision and administration authorities shall coordinate resolution of disputes between their Funded Enterprises over property rights to the State-owned assets of enterprises.

Article 31 State-owned assets supervision and administration authorities shall establish systems for supervising and administering transactions involving property

rights over the State-owned assets of enterprises, strengthen supervision and administration of transactions involving property rights over the State-owned assets of enterprises, promote the rational circulation of the State-owned assets of enterprises, and prevent the loss of the State-owned assets of enterprises.

Article 32 State-owned assets supervision and administration authorities shall perform their duties as investors in respect of the income from the State-owned assets of their Funded Enterprises in accordance with the law. They shall perform their duties as investors in respect of the major investment and financing plans, development strategies and plans of their Funded Enterprises in accordance with State development plans and industrial policies.

Article 33 Major disposal of assets of wholly State-owned enterprises and companies among the Funded Enterprises that must be approved by State-owned assets supervision and administration authorities shall be carried out in accordance with relevant regulations.

PART SIX SUPERVISION OF STATE-OWNED ASSETS OF ENTERPRISES

Article 34 The State-owned assets supervision and administration authority of the State Council shall, on behalf of the State Council, appoint supervisory boards to wholly State-owned enterprises and companies among its Funded Enterprises. The composition, functions and standards of acts, etc. of such supervisory boards shall be handled in accord with the Supervisory Boards of State-owned Enterprises Tentative Regulations.

The State-owned assets supervision and administration authorities of local people's governments shall, on behalf of the people's governments at the same level, appoint supervisory boards to wholly State-owned enterprises and companies among their Funded Enterprises with reference to the Supervisory Boards of State-Owned Enterprises Tentative Regulations.

Article 35 State-owned assets supervision and administration authorities shall, in accordance with the law, supervise the finances of their Funded Enterprises, establish and improve index systems for the maintenance of and increase in the value of State-owned assets and safeguard the rights and interests of the investors of State-owned assets.

Article 36 State-owned and State-controlled enterprises shall strengthen internal supervision and risk control and shall, in accordance with the relevant State regulations, establish sound systems for finance, audit, enterprise legal counsel and democratic supervision by staff and workers, etc.

Article 37 Wholly State-owned enterprises and companies among Funded Enterprises shall, in accordance with regulations, regularly report on their financial

position, production and operation, and the maintenance of and increase in the value of the State-owned assets to the State-owned assets supervision and administration authority.

PART SEVEN LEGAL LIABILITY

Article 38 If a State-owned assets supervision and administration authority fails to appoint and dismiss, or propose the appointment and dismissal of, responsible persons of its Funded Enterprises in accordance with regulations, or interfere in the production and operation activities of its Funded Enterprises in violation of the law, thereby infringing the lawful rights and interests of the enterprises and causing loss of the State-owned assets of the enterprises or other serious consequences, the persons directly in charge and other directly responsible persons shall be subjected to administrative penalties in accordance with the law. If a criminal offence is constituted, criminal liability shall be pursued in accordance with the law.

Article 39 If a wholly State-owned enterprise or company among Funded Enterprises fails to report its financial position, production and operation, and maintenance of and increase in the value of State-owned assets to the State-owned assets supervision and administration authority in accordance with regulations, it shall be issued a warning. If the circumstances are serious, the persons directly in charge and other directly responsible persons shall be subjected to disciplinary punishment in accordance with the law.

Article 40 If a responsible person of a State-owned or State-controlled enterprise abuses his powers or is derelict in his duties, thereby causing loss of State-owned assets of enterprises, he shall be liable for compensation and shall be subjected to disciplinary punishment in accordance with the law. If a criminal offence is constituted, criminal liability shall be pursued in accordance with the law.

Article 41 A responsible person of a State-owned or State-controlled enterprise that is removed from office or subjected to heavier disciplinary punishment for his responsibility for the loss of State-owned assets of enterprises may not serve as a responsible person of any State-owned or State-controlled enterprise within five years. If he has caused major losses of State-owned assets of enterprises or is sentenced to criminal punishment, he may never serve as a responsible person of any State-owned or State-controlled enterprise again.

PART EIGHT SUPPLEMENTARY PROVISIONS

Article 42 The organizational form, organizational structure, rights and obligations of State-owned enterprises, State-controlled enterprises and enterprises in which the State has an equity participation shall comply with the

provisions of laws such as the PRC, Company Law, administrative regulations and these Regulations.

Article 43 The establishment of grassroots organizations of the Communist Party of China, socialist spiritual civilization and the Party's practices and honesty in State-owned enterprises, State-controlled enterprises and enterprises in which the State has an equity participation shall be handled in accordance with the Communist Party of China, Constitution and the relevant regulations.

Labour unions in State-owned enterprises, State-controlled enterprises and enterprises in which the State has an equity participation shall be handled in accordance with the PRC, Labour Union Law and the PRC, Charter of Labour Union.

Article 44 The State-owned assets supervision and administration authority of the State Council and the people's governments of provinces, autonomous regions and municipalities directly under the central government may formulate implementing procedures in accordance with these Regulations.

Article 45 In the event of inconsistencies between administrative regulations on the supervision and administration of State-owned assets of enterprises formulated prior to the implementation hereof and these Regulations, these Regulations shall prevail. (

Article 46 Work units in which government and enterprise have not been separated shall accelerate reform and realize the separation of government and enterprise in accordance with the regulations of the State Council. The State-owned assets supervision and administration authorities shall perform the duties of investors in enterprises in which government and enterprise have been separated and supervise and administer the State-owned assets of enterprises in accordance with the law.

Article 47 These Regulations shall be implemented as of the date of promulgation.

企业国有资产监督管理暂行条例

导航: [法规快递](#) [法规分类查询](#) [企业国有资产监督管理暂行条例及其配套规定](#) 上传时间: 2003-07-23 | 点击数: 13223

(2003年5月13日国务院第8次常务会议通过 2003年5月27日中华人民共和国国务院令 第378号公布 自公布之日起施行)

第一章 总 则

第一条 为建立适应社会主义市场经济需要的国有资产监督管理体制,进一步搞好国有企业,推动国有经济布局和结构的战略性调整,发展和壮大有经济,实现国有资产保值增值,制定本条例。

第二条 国有及国有控股企业、国有参股企业中的国有资产的监督管理,适用本条例。

金融机构中的国有资产的监督管理,不适用本条例。

第三条 本条例所称企业国有资产,是指国家对企业各种形式的投资和投资所形成的权益,以及依法认定为国家所有的其他权益。

第四条 企业国有资产属于国家所有。国家实行由国务院和地方人民政府分别代表国家履行出资人职责,享有所有者权益,权利、义务和责任相统一,管资产和管人、管事相结合的国有资产管理体制。

第五条 国务院代表国家对关系国民经济命脉和国家安全的大型国有及国有控股、国有参股企业,重要基础设施和重要自然资源等领域的国有及国有控股、国有参股企业,履行出资人职责。国务院履行出资人职责的企业,由国务院确定、公布。

省、自治区、直辖市人民政府和设区的市、自治州级人民政府分别代表国家对由国务院履行出资人职责以外的国有及国有控股、国有参股企业,履行出资人职责。其中,省、自治区、直辖市人民政府履行出资人职责的国有及国有控股、国有参股企业,由省、自治区、直辖市人民政府确定、公布,并报国务院国有资产监督管理机构备案;其他由设区的市、自治州级人民政府履行出资人职责的国有及国有控股、国有参股企业,由设区的市、自治州级人民政府确定、公布,并报省、自治区、直辖市人民政府国有资产监督管理机构备案。

国务院,省、自治区、直辖市人民政府,设区的市、自治州级人民政府履行出资人职责的企业,以下统称所出资企业。

第六条 国务院,省、自治区、直辖市人民政府,设区的市、自治州级人民政府,分别设立国有资产监督管理机构。国有资产监督管理机构根据授权,依法履行出资人职责,依法对企业国有资产进行监督管理。

企业国有资产较少的设区的市、自治州,经省、自治区、直辖市人民政府批准,可以不单独设立国有资产监督管理机构。

第七条 各级人民政府应当严格执行国有资产管理法律、法规,坚持政府的社会公共管理职能与国有资产出

资人职能分开，坚持政企分开，实行所有权与经营权分离。

国有资产监督管理机构不行使政府的社会公共管理职能，政府其他机构、部门不履行企业国有资产出资人职责。

第八条 国有资产监督管理机构应当依照本条例和其他有关法律、行政法规的规定，建立健全内部监督制度，严格执行法律、行政法规。

第九条 发生战争、严重自然灾害或者其他重大、紧急情况时，国家可以依法统一调用、处置企业国有资产。

第十条 所出资企业及其投资设立的企业，享有有关法律、行政法规规定的企业经营自主权。

国有资产监督管理机构应当支持企业依法自主经营，除履行出资人职责以外，不得干预企业的生产经营活动。

第十一条 所出资企业应当努力提高经济效益，对其经营管理的企业国有资产承担保值增值责任。

所出资企业应当接受国有资产监督管理机构依法实施的监督管理，不得损害企业国有资产所有者和其他出资人的合法权益。

第二章 国有资产监督管理机构

第十二条 国务院国有资产监督管理机构是代表国务院履行出资人职责、负责监督管理企业国有资产的直属特设机构。

省、自治区、直辖市人民政府国有资产监督管理机构，设区的市、自治州级人民政府国有资产监督管理机构是代表本级政府履行出资人职责、负责监督管理企业国有资产的直属特设机构。

上级政府国有资产监督管理机构依法对下级政府的国有资产监督管理工作进行指导和监督。

第十三条 国有资产监督管理机构的主要职责是：

（一）依照《中华人民共和国公司法》等法律、法规，对所出资企业履行出资人职责，维护所有者权益；

（二）指导推进国有及国有控股企业的改革和重组；

（三）依照规定向所出资企业派出监事会；

（四）依照法定程序对所出资企业的企业负责人进行任免、考核，并根据考核结果对其进行奖惩；

（五）通过统计、稽核等方式对企业国有资产的保值增值情况进行监管；

（六）履行出资人的其他职责和承办本级政府交办的其他事项。

国务院国有资产监督管理机构除前款规定职责外，可以制定企业国有资产监督管理的规章、制度。

第十四条 国有资产监督管理机构的主要义务是：

（一）推进国有资产合理流动和优化配置，推动国有经济布局和调整；

（二）保持和提高关系国民经济命脉和国家安全领域国有经济的控制力和竞争力，提高国有经济的整体素质；

（三）探索有效的企业国有资产经营体制和方式，加强企业国有资产监督管理工作，促进企业国有资产保值增值，防止企业国有资产流失；

（四）指导和促进国有及国有控股企业建立现代企业制度，完善法人治理结构，推进管理现代化；

（五）尊重、维护国有及国有控股企业经营自主权，依法维护企业合法权益，促进企业依法经营管理，增强企业竞争力；

（六）指导和协调解决国有及国有控股企业改革与发展中的困难和问题。

第十五条 国有资产监督管理机构应当向本级政府报告企业国有资产监督管理工作、国有资产保值增值状况和其他重大事项。

第三章 企业负责人管理

第十六条 国有资产监督管理机构应当建立健全适应现代企业制度要求的企业负责人的选用机制和激励约束机制。

第十七条 国有资产监督管理机构依照有关规定，任免或者建议任免所出资企业的企业负责人：

（一）任免国有独资企业的总经理、副总经理、总会计师及其他企业负责人；

（二）任免国有独资公司的董事长、副董事长、董事，并向其提出总经理、副总经理、总会计师等的任免建议；

（三）依照公司章程，提出向国有控股的公司派出的董事、监事人选，推荐国有控股的公司的董事长、副董事长和监事会主席人选，并向其提出总经理、副总经理、总会计师人选的建议；

（四）依照公司章程，提出向国有参股的公司派出的董事、监事人选。

国务院，省、自治区、直辖市人民政府，设区的市、自治州级人民政府，对所出资企业的企业负责人的任免另有规定的，按照有关规定执行。

第十八条 国有资产监督管理机构应当建立企业负责人经营业绩考核制度，与其任命的企业负责人签订业绩合同，根据业绩合同对企业负责人进行年度考核和任期考核。

第十九条 国有资产监督管理机构应当依照有关规定，确定所出资企业中的国有独资企业、国有独资公司的企业负责人的薪酬；依据考核结果，决定其向所出资企业派出的企业负责人的奖惩。

第四章 企业重大事项管理

第二十条 国有资产监督管理机构负责指导国有及国有控股企业建立现代企业制度，审核批准其所出资企业中的国有独资企业、国有独资公司的重组、股份制改造方案和所出资企业中的国有独资公司的章程。

第二十一条 国有资产监督管理机构依照法定程序决定其所出资企业中的国有独资企业、国有独资公司的分立、合并、破产、解散、增减资本、发行公司债券等重大事项。其中，重要的国有独资企业、国有独资公司分立、合并、破产、解散的，应当由国有资产监督管理机构审核后，报本级人民政府批准。

国有资产监督管理机构依照法定程序审核、决定国防科技工业领域其所出资企业中的国有独资企业、国有独资公司的有关重大事项时，按照国家有关法律、规定执行。

第二十二条 国有资产监督管理机构依照公司法的规定，派出股东代表、董事，参加国有控股的公司、国有参股的公司的股东会、董事会。

国有控股的公司、国有参股的公司的股东会、董事会决定公司的分立、合并、破产、解散、增减资本、发行公司债券、任免企业负责人等重大事项时，国有资产监督管理机构派出的股东代表、董事，应当按照国有资产监督管理机构的指示发表意见、行使表决权。

国有资产监督管理机构派出的股东代表、董事，应当将其履行职责的有关情况及时向国有资产监督管理机构报告。

第二十三条 国有资产监督管理机构决定其所出资企业的国有股权转让。其中，转让全部国有股权或者转让部分国有股权致使国家不再拥有控股地位的，报本级人民政府批准。

第二十四条 所出资企业投资设立的重要子企业的重大事项，需由所出资企业报国有资产监督管理机构批准的，管理办法由国务院国有资产监督管理机构另行制定，报国务院批准。

第二十五条 国有资产监督管理机构依照国家有关规定组织协调所出资企业中的国有独资企业、国有独资公司的兼并破产工作，并配合有关部门做好企业下岗职工安置等工作。

第二十六条 国有资产监督管理机构依照国家有关规定拟订所出资企业收入分配制度改革的指导意见，调控所出资企业工资分配的总体水平。

第二十七条 所出资企业中的国有独资企业、国有独资公司经国务院批准，可以作为国务院规定的投资公司、控股公司，享有公司法第十二条规定的权利；可以作为国家授权投资的机构，享有公司法第二十条规定的权利。

第二十八条 国有资产监督管理机构可以对所出资企业中具备条件的国有独资企业、国有独资公司进行国有资产授权经营。

被授权的国有独资企业、国有独资公司对其全资、控股、参股企业中国家投资形成的国有资产依法进行经

营、管理和监督。

第二十九条 被授权的国有独资企业、国有独资公司应当建立和完善规范的现代企业制度，并承担企业国有资产的保值增值责任。

第五章 企业国有资产管理

第三十条 国有资产监督管理机构依照国家有关规定，负责企业国有资产的产权界定、产权登记、资产评估监管、清产核资、资产统计、综合评价等基础管理工作。

国有资产监督管理机构协调其所出资企业之间的企业国有资产产权纠纷。

第三十一条 国有资产监督管理机构应当建立企业国有资产产权交易监督管理制度，加强企业国有资产产权交易的监督管理，促进企业国有资产的合理流动，防止企业国有资产流失。

第三十二条 国有资产监督管理机构对其所出资企业的企业国有资产收益依法履行出资人职责；对其所出资企业的重大投融资规划、发展战略和规划，依照国家发展规划和产业政策履行出资人职责。

第三十三条 所出资企业中的国有独资企业、国有独资公司的重大资产处置，需由国有资产监督管理机构批准的，依照有关规定执行。

第六章 企业国有资产监督

第三十四条 国务院国有资产监督管理机构代表国务院向其所出资企业中的国有独资企业、国有独资公司派出监事会。监事会的组成、职权、行为规范等，依照《国有企业监事会暂行条例》的规定执行。地方人民政府国有资产监督管理机构代表本级人民政府向其所出资企业中的国有独资企业、国有独资公司派出监事会，参照《国有企业监事会暂行条例》的规定执行。

第三十五条 国有资产监督管理机构依法对所出资企业财务进行监督，建立和完善国有资产保值增值指标体系，维护国有资产出资人的权益。

第三十六条 国有及国有控股企业应当加强内部监督和风险控制，依照国家有关规定建立健全财务、审计、企业法律顾问和职工民主监督等制度。

第三十七条 所出资企业中的国有独资企业、国有独资公司应当按照规定定期向国有资产监督管理机构报告财务状况、生产经营状况和国有资产保值增值状况。

第七章 法律责任

第三十八条 国有资产监督管理机构不按规定任免或者建议任免所出资企业的企业负责人，或者违法干预所出资企业的生产经营活动，侵犯其合法权益，造成企业国有资产损失或者其他严重后果的，对直接负责的主管人员和其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任。

第三十九条 所出资企业中的国有独资企业、国有独资公司未按照规定向国有资产监督管理机构报告财务状

况、生产经营状况和国有资产保值增值状况的，予以警告；情节严重的，对直接负责的主管人员和其他直接责任人员依法给予纪律处分。

第四十条 国有及国有控股企业的企业负责人滥用职权、玩忽职守，造成企业国有资产损失的，应负赔偿责任，并对其依法给予纪律处分；构成犯罪的，依法追究刑事责任。

第四十一条 对企业国有资产损失负有责任受到撤职以上纪律处分的国有及国有控股企业的企业负责人，5年内不得担任任何国有及国有控股企业的企业负责人；造成企业国有资产重大损失或者被判处刑罚的，终身不得担任任何国有及国有控股企业的企业负责人。

第八章 附 则

第四十二条 国有及国有控股企业、国有参股企业的组织形式、组织机构、权利和义务等，依照《中华人民共和国公司法》等法律、行政法规和本条例的规定执行。

第四十三条 国有及国有控股企业、国有参股企业中中国共产党基层组织建设、社会主义精神文明建设和党风廉政建设，依照《中国共产党章程》和有关规定执行。

国有及国有控股企业、国有参股企业中工会组织依照《中华人民共和国工会法》和《中国工会章程》的有关规定执行。

第四十四条 国务院国有资产监督管理机构，省、自治区、直辖市人民政府可以依据本条例制定实施办法。

第四十五条 本条例施行前制定的有关企业国有资产监督管理的行政法规与本条例不一致的，依照本条例的规定执行。

第四十六条 政企尚未分开的单位，应当按照国务院的规定，加快改革，实现政企分开。政企分开后的企业，由国有资产监督管理机构依法履行出资人职责，依法对企业国有资产进行监督管理。

第四十七条 本条例自公布之日起施行。